IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT PETITION NO.5033 OF 2005

Between:

G. Venkateshwar Rao

.. Petitioner

and

The Food Corporation of India,
Barah Khamba Road, New Delhi rep. by its
Managing Director and others

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 12th AUGUST, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

1.	Whether Reporters of Local newspapers may be allowed to see the judgment?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No

3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.5033 OF 2005

O R D E R

The petitioner, while working as an Assistant Grade-III (Technical) in the service of the Food Corporation of India, the first respondent, at Devarapalli, was subjected to disciplinary proceedings in connection with a surprise check carried out on 22.05.2001 by the Regional Vigilance Squad of the Corporation at the Procurement Center, Devarapalli. Upon being dissatisfied with his explanation, the Corporation instituted an enquiry into the matter. However, by report dated 25.07.2002, the enquiry officer opined that the charges leveled against the petitioner were not made out. The disciplinary authority, being the Senior Regional Manager of the Corporation, issued Memo dated 17.08.2002 to the petitioner stating that he disagreed with the conclusions of the enquiry officer and called upon the petitioner to submit his explanation. After considering the same, the disciplinary authority, by order dated 12.11.2002, imposed upon the petitioner the penalty of reduction of his pay in the time scale of Rs.4820 - 8530/- to the minimum pay of Rs.4,820/- with a further direction that he would not earn the increments falling due on 01.01.2003, 01.01.2004 and 01.01.2005. In appeal, the Zonal Manager-South, Food Corporation of India, Chennai, by order dated 23.05.2003, confirmed the punishment imposed. Thereafter, The Managing Director of the Corporation rejected the petitioner's review petition under order dated 14.01.2005. Aggrieved by the punishment imposed upon him, which was duly confirmed by the

appellate and reviewing authorities, the petitioner filed the present case.

Smt. K. Udayasri, learned counsel for the petitioner, contended that the entire case against the petitioner was founded upon the drawal of samples by the Vigilance authorities during the surprise check conducted at the Procurement Center, Devarapalli, on 22.05.2001. She contended that the procedure prescribed under the 'Indian Standard Method for Sampling of Smaller Size Foodgrains' was not adhered to in this regard.

A copy of the said norms is placed on record and reflects that a scale of sampling is provided thereunder which requires 80 bags to be sampled in the event the number of bags in the lot is between 501 and 1000. In the present case, the bags in the lot in question were 600 in number, but samples were drawn only from 20 bags. There was thus a clear violation of the prescribed norms and this was the reason the enquiry officer held in favour of the petitioner. However, the disciplinary authority chose to disagree with the enquiry officer on the ground that samples were drawn from a good number of bags and therefore, drawal of samples from a few bags would not alter the result. It was on the basis of this conclusion that the disciplinary authority held against the petitioner and the same was accepted by the appellate authority and thereafter, the reviewing authority.

It is an admitted fact that the punishment imposed upon the petitioner is a major penalty. That being so, the procedure prescribed necessarily had to be followed in true letter and spirit. Paying mere lip service to the prescribed norms would not do.

Sri Dantu Srinivas, learned counsel for the respondent Corporation, was therefore asked to ascertain as to whether the norms prescribed *vis-à-vis* the sampling procedure were binding upon the respondent Corporation. Having received instructions, the learned counsel informed this Court that the respondent Corporation does, in fact, abide by the said sampling norms.

If that be so, there was no reason as to why the respondent Corporation chose to depart from the said procedure in the case of the

petitioner. Once the norms required the sampling of a particular number of bags for different lots, the Corporation would invariably have to sample the required number of bags before it could draw an adverse conclusion based on the analysis of such sampling.

To compound matters further, Smt. K. Udayasri, learned counsel, stated that the respondent Corporation, while dealing with the case of another employee who stood similarly situated, adopted a totally different approach. A copy of the order dated 01.09.2004 passed by the Managing Director of the respondent Corporation is produced in this regard. Perusal thereof reflects that disciplinary proceedings were initiated against one R. Rangaprasada Rao, Assistant Grade-I (Technical), which resulted in his reduction to the post of Assistant Grade-II (Technical). The case against him was based upon sampling drawn in violation of the aforestated procedural norms, as samples were not drawn from the requisite number of bags *vis-à-vis* the total number of bags in the lot. By and under the said order dated 01.09.2004, the respondent Corporation accepted that true quality of the grains would not be established upon analysis, once the sample obtained was not representative of the nature of the consignment owing to sufficient bags not being sampled. No explanation is forth coming from the respondent Corporation as to the different stands adopted by it in dealing with identical cases relating to violation of the sampling procedure.

On the above analysis, as it is admitted that the respondent Corporation did not abide by the prescribed sampling norms, the findings arrived at by analyzing such samples, drawn from a lesser number of bags than prescribed, cannot be the foundation for visiting adverse orders upon the petitioner. The disciplinary action taken against the petitioner upon such irregular sampling therefore cannot be sustained.

The writ petition is accordingly allowed setting aside the punishment imposed upon the petitioner, which was confirmed in appeal and thereafter, in review. The respondent Corporation is directed to take consequential action accordingly. Pending miscellaneous petitions, if

any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

12th AUGUST, 2015

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